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TELEPHONE: (312) 616-5600

TELECOPY: (312) 616-5700 (G3)
(312) 849-0495 (G4)

FACSIMILE COVER SHEET

DATE: FEBRUARY 17, 2004

NUMBER OF PAGES (INCLUDING
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YOUR REFERENCE: 09/349,650 ✓

OUR REFERENCE: 209881

TO: U.S. PATENT AND TRADEMARK OFFICE
EXAMINER JEAN D. JANVIER
GROUP ART UNIT: 3622

TELEPHONE NUMBER:

FACSIMILE NUMBER: (703) 872-9306

FROM: MARK JOY

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NO. 3805 P. 2

PATENT
Attorney Docket No. 209881

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

#50
3.204

In re Application of:

Nyhan et al.

Art Unit: 3622

Application No. 09/349,650

Examiner: Jean D. Janvier

Filed: July 8, 1999

For: SYSTEM AND METHOD FOR
EVALUATING AND/OR
MONITORING EFFECTIVENESS OF
ON-LINE ADVERTISING

**TRANSMITTAL OF APPELLANTS REPLY TO EXAMINER'S ANSWER UNDER
37 C.F.R. SECTION 1.193(b)(1) AND REQUEST FOR ORAL HEARING
UNDER 37 C.F.R. SECTION 1.194**

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR 1.193(b)(1), appellants hereby submit Appellants' Reply to Examiner's Answer in triplicate.

The items checked below are appropriate:

1. Status of Appellants

This application is on behalf of ☐ other than a small entity or ☒ a small entity.

2. Oral Hearing

☒ Appellants request an oral hearing in accordance with 37 CFR 1.194.

03/03/2004 PLEWIS 00000007 121216 09349650 CERTIFICATE OF FACSIMILE TRANSMISSION

01 FC:2403

145.00 I hereby certify that this document (along with any documents referred to as being transmitted, attached, or enclosed) is being transmitted by facsimile to the United States Patent and Trademark Office, Attention: Examiner Jean D. Janvier, Art Unit 3622, Facsimile Number (703) 872-9306, on the date indicated.

Date: February 17, 2004

J. D. Janvier

In re Appln. Of Nyhan et al.
Application No. 09/349,650

3. Extension of Time

- ☒ Appellants believe that no extension of time is required. However, this conditional petition is being made to provide for the possibility that appellants have inadvertently overlooked the need for a petition and fee for extension of time.

Extension fee due with this request: \$

4. Total Fee Due

The total fee due is:

Brief on Appeal Fee	\$ 0.00
Request for Oral Hearing	\$145.00
Extension Fee (if any)	\$ 0.00

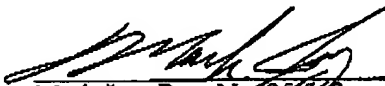
Total Fee Due: \$145.00

5. Fee Payment

- ☐ Attached is a check in the sum of \$
- ☒ Charge Account No. 12-1216 the sum of \$145.00. A duplicate of this transmittal is attached.

6. Fee Deficiency

- ☒ If any additional fee is required in connection with this communication, charge Account No. 12-1216. A duplicate copy of this transmittal is attached.


Mark Joy, Reg. No. 38,562
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601-6780
(312) 616-5600 (telephone)
(312) 616-5700 (facsimile)

Date: February 17, 2004

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PATENT
Attorney Docket No. 209881

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Nyhan et al.

Art Unit: 3622

Application No. 09/349,650

Examiner: Jean D. Janvier

Filed: July 8, 1999

For: **SYSTEM AND METHOD FOR
EVALUATING AND/OR
MONITORING EFFECTIVENESS OF
ON-LINE ADVERTISING**

**REPLY TO EXAMINER'S ANSWER UNDER 37 C.F.R. SECTION 1.193(b)(1)
AND
REQUEST FOR ORAL HEARING UNDER 37 C.F.R. SECTION 1.194**

Mail Stop
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Examiner's Answer mailed on December 17, 2003.
Appellants hereby respectfully request allowance of the pending claims for the reasons set forth
in Appellants' Appeal Brief filed on June 16, 2003, and for the further reasons stated herein.

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Appellants' Responsive Argument

Appellants have carefully reviewed the Examiner's Answer and the references cited therein. For all the reasons previously stated, as well as the additional reasons recited herein, Appellants respectfully submit that neither U.S. Patent No. 5,724,521, nor U.S. Patent No. 5,794,210 discloses or suggests the methods and systems recited in the currently appealed claims.

The Answer, rather than concede the patentability of the now pending claims re-casts the pending claims in a manner neither disclosed nor recited in the claims. The Answer (see, page 23 bottom) alleges that Appellants have argued elements that don't exist in the claims. A careful reading of the claims will disprove this assertion. In fact, the Answer appears to disregard "antecedent basis" when interpreting the claim elements. When carefully construed according to the rules of antecedent basis, Appellants' claims are not anticipated by either of the cited references. For this reason, while not originally believed necessary, Appellants now request an oral hearing.

I. Summary of Appellants' Claimed Invention

Appellants' invention relates to methods and systems for maintaining of record of advertisements activated and displayed upon a computer for viewing by a user (see, preamble of claim 1). The elements of claim 1 include an advertisement that is received from an advertiser server and activated on a (user) computer for viewing by the user. The advertisement includes a code (executable instruction) that initiates sending a signal to a server indicative of activation of the advertisement. The server supplies an indicator identifying an instance of activation of the advertisement. The (user) computer includes a file within which the indicator is stored, and the indicator provides information associated with the advertisement. The invention, as described and claimed, is therefore directed to a particular arrangement wherein advertisements (provided by an ad server) activated on a (user) computer include an embedded code/instruction that results in a signal being transmitted by the computer to a server computer. The server computer provides an indicator of the advertisement activation to the (user) computer that is thereafter stored within a file on the (user) computer. A record of activated advertisements is therefore populated under the centralized control of an external server, yet maintained on the (user) computer.

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II. Disclosure Summary of the Primary Cited References

The Dedrick '521 patent discloses a method and system for providing/recording advertisements displayed to end users via their computers. In contrast to Appellants' disclosed/claimed invention, Dedrick discloses a program module that executes locally on the user computer that records the ad activation (rather than informing a non-local server). Thus, Dedrick does not disclose or suggest a code associated with an ad such that, when the ad is activated on a user's computer, the computer sends a signal to a server, and the server responsively provides an indicator stored within a file on the user computer.

The Goldhaber '210 patent discloses an attention brokerage system that is intended to raise the level of attention of users by monetarily rewarding users for viewing advertisements on their computers through the award of "cyber currency". The Goldhaber patent does not appear to be concerned with facilitating measuring effectiveness of the advertisements themselves. In contrast to Appellants' claimed invention, systems such as the one disclosed in the Goldhaber '210 patent monetarily reward users for advertisement exposure and take steps (i.e., maintaining a record of ad exposure and compensation in a central server's database that is inaccessible by a user) to ensure that a single user is not compensated repeatedly for taking part in advertisement activity. For this reason, the Goldhaber '210 patent teachings, when taken as a whole, unequivocally disclose storing advertisement activation information regarding particular users in a central server database – rather than entrusting such highly valuable data (representing monetary value) on each user's computer.

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III. Responsive Argument to the Answer's Grounds for Rejecting the Claims

Appellants note that the Answer's grounds for rejecting the appealed claims are the same as the previously stated grounds in the Final Office Action. Appellants incorporate by reference all previous arguments submitted in their appeal brief. However, for the additional reasons set forth herein below, Appellants respectfully submit that, the Answer does not establish a *prima facie* case of obviousness, and therefore all of the pending claims, including independent claims 1, 13, 18, 21 and 34 are patentable over the prior art.

A. *The Answer Does Not Acknowledge the Existence of Relationships Between Claim Elements in Independent Claim 1 When Applying the Dedrick Reference*

It seems, based upon the Answer's "Response to Argument" that begins on page 23, that the real issue with regard to the first group of claims is not so much what the prior art teaches, but rather what is claimed in independent claim 1. As best understood by Appellants, the Answer states that the claims of Group I do not require a (user) computer to send a signal to a server computer that causes the server computer to provide an indicator that is thereafter stored on the (user) computer. However, referring to the recited elements of Claim 1, the claimed invention includes as follows: (from the "computer" element) the computer activates the advertisement containing the code, (from the recited "server" element) "the code initiates sending a signal to the server indicative of activation of the advertisement," (from the "server" element) the server supplies "an indicator identifying an instance wherein the advertisement is activated," and (from the "computer" element) "the computer has a file within which the indicator is stored." The Answer's assertion that Appellants have identified non-existent elements in their previous arguments is not well-founded. The Answer does not assert that the prior art references discloses the elements summarized above, and therefore the anticipation rejection should be reversed and/or withdrawn with regard to the claims within Group I.

The Answer, at page 25, notes that previous Office Actions did not account for modifications to the "computer" paragraph of claim 1 in the original amendment submitted on August 23, 2001. In view of the arguments of the Answer, Appellants add that the Answer appears to disregard many of the other clarifying changes to the elements/paragraphs of claim 1 in the original amendment. Appellants do not wish to debate whether the amendment materially changed claim 1. Appellants merely noted in their appeal brief in the middle of page 8 that they had previously attempted to more clearly define the relationships and functionality of the server and computer components recited in Claim 1. In particular, that amendment clarified where an advertisement is activated, the source of the signal to the

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server, the source/recipient of a resulting indicator representing an activation instance of the advertisement.

The Answer's statement (at page 26, lines 7-10) of the issue before the board, mischaracterizes the recited elements of claim 1 (as well as independent claims 13 and 18). The issue of patentability with regard to Group I claims does not turn upon whether exposure information is stored on a user's computer. In both Dedrick and Appellants' claim 1 the exposure information is stored upon the user's computer. The claimed invention, and the real issue to be resolved by the Board with regard to the rejection of the claims over the Dedrick reference, involves "how" (i.e., the sequence of actions through which) the exposure data is stored on the user's computer. In this regard, the claimed invention is not disclosed in the remotest sense by the Dedrick reference.

B. *The Answer Does Not Acknowledge the Existence of Relationships Between Claim Elements in Independent Claim 1 When Applying the Goldhaber Reference to Group I*

The Answer's Response at page 26 again relies upon an overly broad reading of independent claims 1, 13, and 18. Notwithstanding the Answer's assertions to the contrary, the claims incorporate a sequence of actions that are performed by the computer upon which an advertisement is activated and a server that, in response to receiving a signal from the computer regarding activation, provides an indicator to the computer. Thereafter, the indicator is stored upon the computer. The claims embody a logical sequence that cannot be "read out" of the claims to support the current anticipation rejection.

Appellants note that, contrary to the Answer's assertions at page 27, Appellants' view of Goldhaber is far from simplistic. Not only have Appellants carefully reviewed the Goldhaber patent, they have used its detailed disclosure to counter a number of the assertions in the prior Office Actions. It was based upon the detailed teachings regarding "cybercoin 62" that Appellants were able to distinguish their claimed invention at page 8 and 9 of their Appeal Brief.

Furthermore, Appellants object to the Answer's characterization of the Goldhaber reference disclosure at lines 7-15 of page 27 and continuing at page 27, line 16 and ending at page 30, line 11. The disclosure of Goldhaber does not support the Answer's liberal characterization of the teachings beginning at col. 16, lines 6-15, and continuing on to the middle of page 30. Among the many mischaracterized teachings, no where does Goldhaber disclose that the digital cash "signal" is transferred from a server down to a user's computer 104 where it is subsequently stored. As explained previously in Appellants' Appeal Brief, Goldhaber does not disclose maintaining the cyber cash accounts on the individual user's computers, and it makes no sense to place the consumer database 120 (including the digital

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cash 126), summarized in FIG. 7, on a user's computer. Appellants specifically request an element-by-element pairing between the claim elements and column/line citations from the Goldhaber reference if the Answer's assertions introduced at page 27, lines 7-15, and continuing to the middle of page 30 with *modified* recitations from the Goldhaber reference, are not withdrawn.

Appellants reassert that the Goldhaber reference does not teach "attaching" a code (in this case the cybercoin 62) to an advertisement. Notwithstanding the extensive summary of text from the Goldhaber reference indicating that there is an association between the cybercoin 62 and a particular subsequently downloaded ad, the code (i.e., cybercoin 62) is not *attached* to the advertisement. Such attachment of the cybercoin 62 to an advertisement would necessitate downloading the advertisement and the cybercoin 62 together. However, in Goldhaber, the cybercoin 62 merely initiates downloading an associated, yet separately stored advertisement from the server 106 to the user computer 104 after being selected. For this reason, Appellant disagrees with the Answer's assertion that Goldhaber teaches "attaching a code to the advertisement" as recited in claims 13 and 18.

C. The Answer, in Rejecting the Claims within Group II, Improperly Asserts That the User Computer 104 Stores a Value Received From the Administration Computer Indicative of Activation of the Advertisement Message as Recited in claims 21 and 34

Notwithstanding the discussion below regarding the location of the Consumer database 120, even if Goldhaber teaches locating the database 120 on the user's computer 104, the teachings of Goldhaber to not read upon the "generating" and "storing" elements of claims 21 and 34. With regard to the "generating" element, the cybercoin 62 is a precursor to an advertisement message. The server 106 downloads the actual advertisement after a user selects the cybercoin 62. See, Goldhaber, col. 16, lines 6-10. Thus, equating the cybercoin 62 with the recited "advertisement message" is improper.

Furthermore, with regard to the recited "storing" element that facilitates maintaining a record of previously viewed advertisements, nowhere does Goldhaber disclose that such a record is maintained on the user computer 104. The Goldhaber reference discloses maintaining a record of this type upon the server 106 to prevent users from repeating the viewing process for a same advertisement to obtain more cyber cash. See, col. 17, lines 44-53. The Answer, at page 17, lines 4-10, asserts that Goldhaber discloses that such information is alternatively stored in the computer 104 having a database 120. The Answer asserts that such information can become part of the Interest Profile 124. However, no such alternative arrangement is disclosed in the Goldhaber reference. In the event that this assertion is not withdrawn, Appellants request a citation to the Goldhaber reference

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supporting this interpretation of Goldhaber's disclosure. For at least these reasons, Goldhaber does not anticipate the claims of Group II.

D. *The Answer, in Rejecting the Claims within Group II, Improperly Asserts That the Consumer Database (FIG. 7) of the Goldhaber Reference Resides on a User's Computer*

Goldhaber does not disclose storing a value received from the administrative computer indicative of activation of the advertisement message. Goldhaber discloses a consumer database 120 that is properly maintained on a centralized server (e.g., 106). The consumer database 120 comprises a set of records (including a digital cash account value) corresponding to the participants in Goldhaber's disclosed pay for user access/attention scheme. The Answer, at pages 31-32 does not address any of the points raised at pages 9 and 10 in Appellants' Appeal Brief regarding why one skilled in the art *would not* interpret Goldhaber as teaching storing the Consumer database (representing significant monetary value) on each user's individual computer. Such points include why one skilled in the art would interpret Goldhaber's disclosure as teaching a configuration of a system where sensitive monetary value, potentially worth many millions of dollars, is placed beyond the control of a centralized authority, upon millions of users' computers.

As previously explained in Appellants' Appeal Brief, Goldhaber does not state anywhere that the Consumer database 120 (see, Fig. 7) is *stored* upon each individual user's computer. In fact, at col. 13, line 34, the Goldhaber patent unequivocally states "We keep a personal profile for each of our members." (see, col. 13, lines 26-40 referring to interest profile 124).

Such distributed database, as alleged by the Answer, is not only not disclosed, such distributed storage of monetary value (i.e., digital cash) is highly implausible/illogical. From a system administrator's point of view, placing the value on a user's computer opens the door for users to modify the contents of the database, replicate the data by copying the file, etc. From a user's standpoint the distributed consumer database arrangement proposed by the Answer for the Goldhaber system makes no sense. A user does not necessarily use the same computer each time the user views advertisements for monetary compensation. Furthermore, storing the database for each computer would not accommodate users who share a single computer. A single, centralized consumer database is the only logical arrangement for the Goldhaber system. For at least this reason, the contents of the consumer database 120 are, without question, stored upon the server 106.

Given the strong incentive not to store the consumer database on the user's computer, the Answer does not point out a single unequivocal teaching in Goldhaber that the Consumer database 120 is stored on the user's computer. The only motivation for interpreting

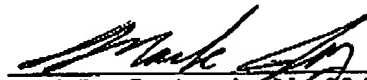
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Goldhaber to disclose placing the Consumer database on the user's computer is to support rejection of Appellants' claims 21-50 that are directed to a non-monetary (and thus non-critical) record of user's exposure to ads.

Conclusion

In the office actions preceding this appeal and the Answer mailed on December 17, 2003, there has been an absence of recognition that the claimed invention recites a method and system that generates a file on a user's computer through the integrated operations of the user's computer and a server computer that supplies an indicator to the user's computer in response to a signal received from the user's computer indicative of execution of an advertisement provided by an advertisement server. The user's computer sends the signal to the server computer in accordance with code embedded within the advertisement activated on the user's computer. The subject matter of the claimed invention is not anticipated by the prior art known to Appellants. Accordingly, Appellants respectfully submit that the rejections of the pending claims do not present a *prima facie* case of anticipation or obviousness and should be reversed.

Respectfully submitted,



Mark Joy, Registration No. 35,562
One of the Attorneys for Appellants
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson
Chicago, Illinois 60601-6780
(312) 616-5600 (telephone)

Date: February 17, 2004

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APPENDIX

Pending Claims are 1-18 and 20-50.

1. A system for facilitating measuring effectiveness of advertisements displayed upon a computer for viewing by a user, the system comprising:
 - a code associated with an advertisement received from an advertiser server;
 - a server capable of supplying an indicator identifying an instance wherein the advertisement is activated for viewing by the user, and wherein the code initiates sending a signal to the server indicative of activation of the advertisement; and
 - a computer on which the advertisement is activated for viewing by the user wherein the computer has a file within which the indicator is stored, the indicator providing information associated with the advertisement.
2. The system of claim 1 wherein the information includes a time at which the advertisement is activated.
3. The system of claim 1 further comprising:
 - an advertising server capable of delivering the advertisement to the computer.
4. The system of claim 1 further comprising:
 - a plurality of advertising servers capable of delivering an advertisement to the computer of the user wherein each of the advertisements includes a code associated with the advertisement and further wherein the server is capable of identifying an instance wherein the advertisement is activated for viewing by the user.
5. The system of claim 1 wherein the server generates a survey accessible to the user.
6. The system of claim 5 wherein the survey is generated based on advertisements to which the user has been exposed.

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7. The system of claim 6 wherein the survey obtains demographic information of the user.
8. The system of claim 1 wherein the server includes a plurality of categories for classifying advertisers.
9. The system of claim 1 wherein the server generates a survey accessible to the user wherein results of a plurality of surveys answered by a plurality of users assist in computing the effectiveness of the advertisement.
10. The system of claim 1 wherein the server includes an interface for receiving questions generated by the advertiser.
11. The system of claim 1 wherein the server includes an interface for receiving questions and selected demographic information generated by the advertiser.
12. The system of claim 1 wherein research results are accessible to the advertiser.
13. A method for facilitating measuring effectiveness of an advertisement message from an advertiser and activated upon a computer for viewing by a user, the method comprising the steps of:
 - providing the advertisement message through an on-line network accessible by the computer of the user;
 - attaching a code to the advertisement for facilitating identifying an instance wherein the advertisement has been activated upon the computer for viewing by the user and initiating sending a signal to a server; and
 - storing information in the computer of the user provided by the server wherein the information relates to activation of the advertisement.
14. The method of claim 13 further comprising the step of:
 - generating a survey accessible by the computer of the user.

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15. The method of claim 13 further comprising the step of:
generating a survey for transmission to the computer of the user based on advertisements to which the user has been exposed.
16. The method of claim 13 further comprising the step of:
generating survey questions based on information received from the advertisers.
17. The method of claim 13 further comprising the step of:
computing effectiveness of the advertisement based on survey results obtained from users exposed to the advertisement and from users not exposed to the advertisement.
18. A system for identifying an instance wherein an advertisement deliverable through an on-line network to a computer of a user has been activated for viewing by the user, the system comprising:
a code attached to the advertisement facilitating generating a signal when the advertisement is activated on the computer wherein the code provides information relating to activation of the advertisement; and
a server for receiving the signal from the computer of the user, and wherein the server generates a second signal in response to the signal wherein the second signal includes information related to the activation of the advertisement and is stored on the computer of the user.
19. Canceled.
20. The system of claim 18 wherein the information includes a value corresponding to a time at which the advertisement was activated upon the computer for viewing by the user.

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21. A system for facilitating measuring effectiveness of advertisements activated upon users' computers, the system comprising:
an administration computer;
a user computer;
an advertisement message; and
a set of computer instructions executed upon the user computer, in association with activation of the advertisement message, facilitating:
generating a signal, in association with activation of the advertisement message upon the user computer, to the administration computer; and
storing, in association with the signal, within memory on the user computer a value received from the administration computer in response to the signal and indicative of activation of the advertisement message.

22. The system of claim 21 wherein the administration computer includes executable computer instructions for:
receiving the signal from the user computer; and
transmitting, in response to the receiving the signal, a message to the user computer resulting in the user computer performing the storing a value step.

23. The system of claim 21 further comprising a cookie storable upon the user computer, and wherein the cookie contains the value.

24. The system of claim 23 wherein the cookie comprises a time value corresponding to activation of the advertisement message upon the user computer.

25. The system of claim 24 wherein the cookie comprises an identification of the advertisement message.

26. The system of claim 21 wherein the user computer includes a record of advertisement messages activated on the user computer.

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27. The system of claim 26 wherein the record further stores information corresponding to times at which advertisement messages, including embedded code for invoking the generating a signal, have been activated upon the user computer.

28. The system of claim 21 further comprising an advertisement server that transmits the advertisement message to the user computer.

29. The system of claim 21 wherein the administration computer includes executable instructions for providing survey questions to the user computer.

30. The system of claim 29 wherein at least one of the survey questions is based upon at least the value within memory of the user computer indicative of the activation of the advertisement message.

31. The system of claim 30 wherein the survey questions include requests for demographic information of a respondent.

32. The system of claim 29 further comprising analytical tools that analyze results from a plurality of survey results to render data indicative of activated advertisement effectiveness.

33. The system of claim 29 wherein at least one question of the survey questions is supplied by an advertiser.

34. A method for facilitating measuring effectiveness of advertisements activated on users' computers, the method comprising the steps of:

receiving, by a user computer, an advertisement including an embedded code;
generating, by the user computer, in accordance with the embedded code and in association with activation of the advertisement upon the user computer, a signal for an administration computer; and

storing within memory on the user computer a value received from the administration computer in response to the signal and indicative of the activation of the advertisement.

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35. The method of claim 34 further comprising the steps of:
receiving, by the administration computer, the signal from the user computer;
and
transmitting, in association with the receiving the signal step, a message to the
user computer resulting in the user computer performing the storing a value step.
36. The method of claim 34 further comprising the step of:
storing, by the user computer, a cookie containing the value.
37. The method of claim 36 wherein the cookie comprises a time value
corresponding to activation of the advertisement upon the user computer.
38. The method of claim 37 wherein the cookie comprises an identification of the
advertisement.
39. The method of claim 34 further comprising the step of:
storing, upon the user computer, a record of advertisements activated on the user
computer.
40. The method of claim 39 wherein the record of advertisements includes
information pertaining to a time at which advertisements including the embedded code are
activated on the user computer.
41. The method of claim 34 further comprising the step of:
transmitting, by an advertisement server, the advertisement including the embedded code
to the user computer.
42. The method of claim 34 further comprising the step of:
providing, by the administration computer, survey questions.

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43. The method of claim 42 wherein at least one of the survey questions is based at least upon the value within memory of the user computer indicative of the activation of the advertisement.

44. The method of claim 43 wherein the survey questions include requests for demographic information of a respondent.

45. The method of claim 42 further comprising the step of:
executing a set of analytical tools that analyze results from a plurality of survey responses to render data indicative of activated advertisement effectiveness.

46. The method of claim 45 further comprising the step of:
comparing survey results of exposed and non-exposed users to render the data indicative of activated advertisement effectiveness for a particular advertisement.

47. The method of claim 45 further comprising the step of providing on-line access to the data indicative of activated advertisement effectiveness.

48. The method of claim 42 wherein at least one question of the survey questions is based upon information provided by an advertiser.

49. The method of claim 42 further comprising the steps of:
rendering advertisement effectiveness values based on survey results obtained from user exposed to the advertisement and from users not exposed to the advertisement.

50. The method of claim 34 further comprising the step of:
receiving, by an administration entity associated with the administration computer, questions and selected demographic information provided by an advertiser.

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